

REMARKS

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Claims 5 through 11 are present in the case; claims 1 through 4 and 12 through 14 having been withdrawn.

Claims 5 and 7 through 11 have been amended in response to the Examiner's objection.

Claim 5 now recites the disclosed purposes of treatment, and the informalities of Claims 7, 8 and 9 have been rectified.

The Examiner is respectfully requested to reconsider her objection to the claims under 35 U.S.C. 103(a), in light of the amendment of Claim 5, now setting forth the purpose of the prophylaxis, namely as treatment for periodontal infection; oral bone regeneration; aphthous ulcers; herpes simplex and gingivitis.

It is respectfully submitted that the teachings of the prior art, being specifically directed to oral cleansing, cannot by any stretch of the imagination be construed to imply treatment for periodontal infection; oral bone regeneration; aphthous ulcers; herpes simplex and gingivitis.

The use of the specific containers as now claimed is not without significance, in that the maintenance of purity of the material, which is manufactured under stringent laboratory conditions, is important; while the use of opaque and substantially opaque protective surfaces can serve to limit photo-induced changes.

The background to the present invention is quite unusual. The subject formulation was initially intended for use as a soothing dressing, when applied to sites of tongue piercings.

However, new and unexpected uses were discovered, namely that beneficial results were experienced in the promotion of healing for periodontal infection, oral bone

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regeneration, apthous ulcers, herpes simplex and gingivitis. The accompanying letter from Dr T.Witzu, DDS and its accompanying survey and survey results clearly attest to the unexpected and surprisingly beneficial results arising from the use of the subject H.O.P. formulation. [Textual information has been faithfully and accurately reproduced to assist the Examiner]

It is respectfully submitted that the subject formulation and its utility is clearly established, and the fact of its effectiveness is in no way obvious or to be expected.

The burden of establishing a prima facie case of obviousness is by a clear showing of some objective teaching in the prior art or from knowledge generally available to one of ordinary skill in the art that would lead that individual to combine the relevant teachings of the references. Obviousness is not established by locating references which describe the various aspects of a patent applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done. Ex parte Levengood, 28 USPQ 2d 1300, 1302 (PBAI 1993).

Further, it is now well settled that a rejection under 35 U.S.C. 103 must rest on a firm factual basis and that the Examiner has the initial duty of providing that factual basis. Deficiencies in the factual basis cannot be supplied by resorting to speculation or unsupported generalities. In re Warner, 379F.2d 1011, 154USPQ 173 (CCPA 1967), and in re Freed, 424 F.2d 785, USPQ 570 (CCPA 1970).

Furthermore, the mere fact that the prior art can be modified does not make the modification obvious unless the prior art suggests the desirability of the modification. In re Gordon, 733 F.2d 900, 902; 221 USPQ 1125 (Fed. Cir. 1984)

It is respectfully submitted that the cited references fail to meet the foregoing tests.

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Consideration of the amended claims with a view to their allowance is requested.

Respectfully submitted

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